

Copy in 444B

Open

O
P
Y

October 10, 1956

NEW HAMPSHIRE LAW LIBRARY

Mr. N. W. Myers, Treasurer
University of New Hampshire
Durham, New Hampshire

SEP 22 1998

CONCORD, N.H.

Dear Mr. Myers:

In response to your inquiry of September 25, 1956, regarding the necessity of the University securing additional water facilities, I submit the following.

Revised Statutes Annotated, Chapter 187, section 25, provides that money appropriated for the University may be used for, among other things,

"the construction, extension and maintenance of water, sewer and heating systems;"

and Revised Statutes Annotated, Chapter 187, section 8, provides in part that the trustees may

"acquire water by purchase, development, or otherwise, construct reservoirs or water towers, erect pumping machinery, lay water mains and pipes, install gates, valves, and hydrants."

These two sections would indicate that the University may acquire land by purchase to insure an adequate supply of water.

Assuming that the Town of Madbury has set up a water district that would appear to have no bearing on this matter other than the general common law rule with respect to underground water which in essence is as follows.

Ground water is referred to generally as subterranean water and, more particularly, it is presumed to be percolating unless there is a defined and known channel existing in that area under the earth. This State has adopted what is known as the "reasonable doctrine" which in essence is the reasonable use of such water as distinct from the unqualified and absolute right of the landowner to dispose of all waters in his soil; in other words, a landowner may drive a well on his own land even though it draws water from a neighbor's land if he is making reasonable use of same but if he is doing it for the express purpose of transferring the water to his own well, fully knowing that it will drain his neighbor's, this is not a reasonable use. What, in any particular case, is a reasonable use is a question of fact to be determined from the circumstances.

Mr. N. W. Meyers -- 2.

October 10, 1956

Since the University of New Hampshire is a instrumentality of the State of New Hampshire, it would be my thought that between your agency and other departments and political subdivisions of the State, that you would be on at least an equal footing with respect to water rights and if in the event that eminent domain proceedings were commenced against the University of New Hampshire, the State would undoubtedly become a party. That being so, it would appear that should the Court entertain such an action, there would have to be a balancing of the equities involved.

It is true that were the Federal Government to institute eminent domain proceedings against the University it may be that they could prevail but, again, I am sure the Court would consider the respective equities involved. It follows, therefore, that there is nothing legally, so far as I can ascertain, other than the aforementioned circumstances, to prevent you from purchasing land adjacent to Durham for the purpose of increasing your water supply.

Very truly yours,

William J. Deachman
Assistant Attorney General

WJD/W